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Chair  
International Ethics Standard Board  
for Accountants

Sent via IESBA website

Brussels, 9 May 2023

**Subject: response to the Proposed Revisions to the Code Addressing Tax Planning and Related Services**

Dear Gabriela,

Accountancy Europe is pleased to provide you with responses to the IESBA *Proposed Revisions to Code Addressing Tax Planning and Related Services*.

We welcome IESBA's initiative in this area. Accountancy Europe has been active in discussing the role of accountants in the correct functioning of tax systems, and the importance of considering the public interest in tax advice, since 2015. We would welcome the development of an internationally accepted code of ethics in respect of tax planning services to avoid the proliferation of national or regional codes. We would also welcome IESBA exploring ways in which this Code could be reconciled to those codes that are already well established.

Taxation is subject to constant change - to raise revenue, secure inward investment and to combat abuse and illegal acts. For professional accountants (PAs) working in this field there will always be uncertainty and risk and they will have to exercise their professional judgement – which is well supported by a strong ethical code. PAs are at the forefront of the development of sustainable and fair tax systems, whilst considering the public interest.

Consequently, we fully support the recognition in this proposed revision to the Code of the public interest element of the work that PAs perform in the operation of complex national and international tax systems.

It would be very beneficial if IESBA's proposed ethical requirements on tax planning were to be adopted by organisations and professions other than that of professional accountants – an approach that the IESBA is promoting in respect of its work on sustainability matters. The accountancy profession will play a key role in fighting illegal and unethical activities and practices but there are other actors in this arena that also have roles to play.

Tax policy and case law, along with areas such as sustainability and AI for example, are very fast moving and the sections of the Code relating to tax planning and related services will need to be reviewed frequently to reflect changes in public opinion and developments with regulators. To that end, we wonder whether the IESBA should consider reviewing the Code to ensure that it remains, as

far as possible, principles-based rather than rules-based. This would help reduce the likelihood that the Code becomes unwieldy with specific sections covering an increasing number of specialist areas – many of which are in continuous development and may require frequent and substantial revision as practices mature.

In respect of the specific proposals contained in this revision to the Code, the main point we would make is in reference to the requirement (R380.11) that “A professional accountant shall recommend or otherwise advise on a tax planning arrangement to a client only if the accountant has determined that there is a credible basis in laws and regulations for the arrangement.”

We support the use of the term ‘credible basis,’ acknowledging that, by necessity, a professional accountant’s judgement will be required to determine that a credible basis exists. However, we wonder whether IESBA should include comprehensive application material in the final version of the amendments - it is essential that the possibility of different interpretations of the term is reduced as much as possible.

We thank you for the opportunity to comment. For further information on this letter, please contact Paul Gisby at [paul@accountancyeurope.eu](mailto:paul@accountancyeurope.eu) or Harun Saki at [harun@accountancyeurope.eu](mailto:harun@accountancyeurope.eu).

Our full responses to the requests for specific comment can be found below.

Sincerely,



Mark Vaessen  
President



Olivier Boutellis-Taft  
Chief Executive

#### **ABOUT ACCOUNTANCY EUROPE**

Accountancy Europe unites 50 professional organisations from 35 countries that represent close to **1 million** professional accountants, auditors and advisors. They make numbers work for people. Accountancy Europe translates their daily experience to inform the public policy debate in Europe and beyond.

Accountancy Europe is in the EU Transparency Register (No 4713568401-18).

## ANNEX - REQUEST FOR SPECIFIC COMMENTS

Where we refer to specific provisions in the proposed amendments, our comments apply to both the equivalent sections in Articles 280 (Professional Accountants in Business) and 380 (Professional Accountants in Public Practice), unless otherwise specified.

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### Request for Specific Comments 1 - Proposed New Sections 380 and 280

*Do you agree with the IESBA's approach to addressing TP by creating two new Sections 380 and 280 in the Code as described in Section VI of this memorandum?*

1. We agree with IESBA's approach in creating two new sections: Section 380 for professional accountants in practice (PAPP) and Section 280 for professional accountants in business (PAIB).
2. Although the proposed requirements and guidance are broadly the same, using terminology specific to PAPPs and PAIBs is useful to avoid confusion. This, we feel, will be particularly useful in the sections covering how the professional accountant deals with disagreement on the tax planning arrangement.
3. For the sake of clarity, it would be useful if any significant divergences (i.e., not mere differences of terminology) between Sections 280 and 380 are clearly highlighted, with explanation of why the divergence was considered necessary.

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### Request for Specific Comments 2 - Description of Tax Planning and Related Services

*Do you agree with IESBA's description of Tax Planning (TP) as detailed in Section VII.A above?*

4. We agree in principle with the IESBA's description of tax planning activities as comprising "a broad range of activities designed to assist an employing organization in structuring its affairs in a tax-efficient manner."
5. We understand the IESBA's reasoning to not use the OECD's definition of tax planning, which emphasises minimising the tax liability. We feel that the IESBA's description is balanced and neutral.
6. Indeed, it could be considered that in some circumstances an entity "structuring its affairs in a tax-efficient manner" would result in it eschewing an overly aggressive interpretation of tax law(s) that could result in tax controversies and could result in the entity being subject to a tax audit or litigation and related costs.
7. That being said, several of our constituents did find the concept of 'tax-efficient' to be somewhat vague and open to interpretation. Consequently, the IESBA should consider whether additional commentary is required to reduce the possibility of differences in interpretation of this term.
8. As mentioned in the cover letter, tax policy is a rapidly evolving topic. For example, we expect a legislative proposal from the European Commission within the next few months and we anticipate that this will contain an 'operationalisable' definition of aggressive tax planning. We propose that IESBA monitors developments in this area as they may feed into the discussion on the definition of tax planning.

9. Additionally, we have concerns with the inclusion of ‘related services.’ It is not apparent why ‘related services’ are included in this section as the requirements (e.g. R380.6, R380.9, R380.11 etc) refer to ‘tax planning arrangements’. Although this section only covers a description of tax planning and related services, it introduces a level of uncertainty as to whether related services are automatically drawn into the requirements or not. This should be clarified in the final text.
10. It could be argued that where ‘related services’ are an integral part of a tax planning arrangement that they should be in scope of the requirements, but this is not clearly stated in the text.
11. Consequently, we suggest that the IESBA consider the rationale behind including a description of ‘related services’ in the text and clarifying whether they are in scope of the requirements (and if so, which specific requirements are intended to apply).
12. If related services are fully included, and where they are not an integral part of a tax planning arrangement, we believe that it would be beneficial to highlight that for such related services it will be easier to establish a credible basis and that a substantial stand-back test may not be required, particularly where the related services are primarily compliance related. This will help to reduce the possibility of unintended consequences.
13. Additionally, we have concerns with the inclusion of ‘another party’ in the first sentence of Article 380.5 A3. Presumably, this is to link this Article with Article 380.22 A1 *Tax Planning Products or Arrangements Developed by a Third Party* – if so, we would recommend that this is explicitly expressed. If not, then the term should be excluded or otherwise explained as the current wording suggests that the PA could be forced to monitor the activities of other service providers to be in compliance with the Code.

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### **Request for Specific Comments 3 - Role of the Professional Accountant (PA) in Acting in the Public Interest**

*Do you agree with IESBA’s proposals as explained in Section VII.B above regarding the role of the PA in acting in the public interest in the context of TP?*

14. Although the regulatory environment for providing tax advisory services differs considerably across Europe, Accountancy Europe believes that the professional accountant should consider the public interest when providing tax advice.
15. PAs should also be aware that the environment of client and public opinion on tax planning are subject to rapid change, which will directly impact the development of the concept of public interest in a tax planning context.
16. We agree with IESBA’s proposed contextual guidance describing how professional accountants ‘help to facilitate a more efficient and effective operation of a jurisdiction’s tax system, which is in the public interest (380.4 A1).’
17. However, PAs should be aware that many stakeholders will have a different perspective of what constitutes public interest in respect of tax planning. This will largely be driven by circumstances in the jurisdiction(s) in which the PA operates, and where a tax planning arrangement affects more than one jurisdiction, the perspective of public interest may not be the same. This would need to be considered in the stand-back test.

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## Request for Specific Comments 4 - Basis for Recommending or Otherwise Advising on a Tax Planning Arrangement

*Do you agree with the IESBA's proposals regarding the thought process for PAs to determine that there is a credible basis in laws and regulations for recommending or otherwise advising on a TP arrangement to a client or an employing organization, as described in Section VII.E above?*

18. Accountancy Europe agrees with IESBA's conclusion that it would be inappropriate to determine uncertainty with measures based on the percentage likelihood that a particular tax planning arrangement will succeed in law (which is in itself very subjective).
19. There were some fundamental concerns raised by our constituents about the interpretation and determination of what constitutes a 'credible basis,' and how this test is intended to work in practice. This may be an area deserving of more detailed application material to provide further guidance.
20. Concern has been raised that the wording of R380.11 which precludes a PA from advising the client about an alternative arrangement after the PA has decided that the arrangement under discussion has no credible basis. Article 380.11 A1 mentions that the PA is allowed to explain to the client their rationale but does not explicitly mention possibility of suggesting alternative arrangements that would have a credible basis. In any event, the wording of R380.11 has precedence over 380.11 A1 and it is unclear whether the PA explaining their rationale would also include the possibility of presenting alternatives. We suggest that the wording is amended to explicitly permit PAs to present alternatives to the arrangement that has no credible basis – if this is not the IESBA's intention then the reasons for this should be stated.
21. The thought process described in 380.11 A3 provides a solid foundation to assess whether a credible basis exists but we wonder whether further commentary and examples could help PAs navigate this process.

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## Request for Specific Comments 5 - Basis for Recommending or Otherwise Advising on a Tax Planning Arrangement

*Are you aware of any other considerations, including jurisdiction-specific considerations, that may impact the proper application of the proposed provisions?*

22. None.

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## Request for Specific Comments 6 - Consideration of the Overall Tax Planning Recommendation or Advice

*Do you agree with the proposals regarding the stand-back test, as described in Section VII.F above?*

23. Accountancy Europe broadly supports the inclusion of a stand-back test, as proposed in R380.12. Professional accountants giving tax advice should consider the potential economic and reputational impact on the client, the accountant and the profession, should the tax planning arrangement be made public.
24. However, we have some concerns about the inclusion of 'wider economic consequences' as a factor in R380.12. It is mentioned in paragraph 65 of the Explanatory Memorandum (but not in the proposed provisions) that the PA is not expected to conduct additional research as part of the stand-back test but gauging the 'wider economic consequences' could be very difficult

without considerable additional research – especially in respect of arrangements with a cross-border element.

25. We do not consider that it will be possible to concretely determine “wider economic consequences.” Even reputational risk (and the potential financial risks that could arise therefrom) is an abstract concept and is highly judgemental. The risk would need to be significant to provide a persuasive argument to the PA and to their client that a tax planning arrangement should not be implemented. We suggest that IESBA considers the practicalities of including this factor and whether further guidance is required in general – perhaps by including Paragraph 65 of the Explanatory Memorandum in the application material.
26. As an additional point, we also consider that the title of this section - *Consideration of the Overall Tax Planning Recommendation or Advice* – is somewhat misleading as what is actually under consideration is the potential impact of the tax planning or advice.

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### Request for Specific Comments 7 - Describing the Gray Zone

*Do you agree with the IESBA’s proposals as outlined in Section VII.G above describing the gray zone of uncertainty and its relationship to determining that there is a credible basis for the TP arrangement?*

27. Accountancy Europe agrees with the proposals, acknowledging that professional accountants often face uncertainty when deciding whether a tax planning arrangement is legal or illegal – the grey zone.
28. The grey zone can arise from lacunas in the wording and the legislators’ intentions behind the legislation, imprecise drafting of tax law, differences in interpretation of laws or contrary decisions in legal cases. It occurs in domestic tax legislation and is even more prevalent when dealing with tax arrangements that cross borders.

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### Request for Specific Comments 8 - Applying the Conceptual Framework to Navigate the Gray Zone

*In relation to the application of the CF as outlined in Section VII.H above, is the proposed guidance on:*

- a) *The types of threats that might be created in the gray zone;*
  - b) *The factors that are relevant in evaluating the level of such threats;*
  - c) *The examples of actions that might eliminate threats created by circumstances of uncertainty; and*
  - d) *The examples of actions that might be safeguards to address such threats sufficiently clear and appropriate?*
29. Accountancy Europe agrees that tax planning often carries a degree of uncertainty, especially in respect of cross-border transactions. Consequently, we welcome IESBA’s approach of:
    - a. Highlighting the main areas of uncertainty that a PA providing tax planning advice may encounter (380.15 A2)
    - b. Requiring that the PA discusses the uncertainty with the client (R380.16)

- c. Presenting potential ethical threats that could arise from a tax planning service (380.17 A1)
  - d. Presenting factors that are relevant in evaluating the level of such threats (380.17 A2)
  - e. Presenting examples of actions that might eliminate such threats (380.17 A3)
  - f. Presenting examples of actions that might be safeguards to address such threats (380.17 A4) and
  - g. Presenting steps to help PAs establish the identity of the ultimate beneficiaries of a tax planning arrangement (380.17 A5).
30. We see certain elements discussed as being of particular importance. These include:
- a. Whether the proposed tax arrangement has a clear economic purpose and substance (380.17 A2)
  - b. Whether the proposed tax planning arrangement could be contrary to the intents of the relevant tax legislation (380.17 A2)
31. In addition, we would propose adding to 380.17 A2 the following factors that are relevant in evaluating the level of potential threats from providing a tax planning service (as set out in our 2020 publication, *Accountants & Tax*):
- a. Whether an arrangement (or elements of the arrangement) is contrived, wholly artificial or seeks to exploit loopholes, mismatches between different legislation or different treatment of structures or items in different countries
  - b. Whether the tax planning arrangement is a pre-packaged scheme used for different clients with little modification for the clients' specific circumstances
  - c. Whether the success of the arrangement relies to any degree on the withholding of key information from tax authorities
  - d. Whether the arrangement involves non-cooperative jurisdictions or jurisdictions that do not require the filing of beneficial ownership information
  - e. Whether the arrangement involves the use of non-transparent structures.
32. We consider that there is interlinkage and overlap between different sections of the proposed revision to the Code – in particular, between R380.9 (Responsibilities of all Professional Accountants), R380.11 (determining the credible basis) and R380.12 (the stand back test) and then Articles 380.17 A2 and 380.18 A4.
33. We acknowledge that the paragraph 68 of the Explanatory Memorandum states that the stand-back test need not be performed sequentially. However, it can be difficult to navigate the sequence of actions that would best achieve the aims of the proposed revisions to the code.
34. For example, R380.19 requires that a professional accountant gains knowledge of the client and the purpose of the tax planning arrangement. For most professional accountants involved in tax advisory work, this would be an essential first step to providing quality, client specific advice. Consequently, it would appear to be an element of establishing a credible basis for the advice and not part of the stand-back test.



35. However, in the first and second bullets of 380.17 A2 (assessing possible risks) both the (lack of) transparency of ultimate beneficial ownership and the arrangement having no clear economic purpose are mentioned as factors that are relevant in evaluating the level of the threats. However, 380.17 A4 (safeguards against the risks) highlights these same factors are actions that can be used to address the threats.
36. If these are factors that increase the level of the threat, then they cannot be safeguards to address the level of the threat at the same time. We also suggest that a PA without this information could be in breach of R380.19 and consequently should not undertake the engagement as this would be a clear breach of the Code. In many jurisdictions, this would also result in the PA being in breach of anti-money laundering legislation.
37. We would also comment that some of the proposed safeguards in A380.17 A4 are very simplistic – for example, if establishing the identity of ultimate beneficiaries was so simple it probably wouldn't increase the level of the threat from the start of the process.

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### Request for Specific Comments 9 - Disagreement with Management

*Do you agree with the proposals outlined in Section VII.I above which set out the various actions PAs should take in the case of disagreement with the client or with the PA's immediate superior or other responsible individual within the employing organization regarding a TP arrangement?*

38. We propose that the scope of R380.19 to R380.21 is specified to cover those situations where, from the PA's point of view, there is no credible basis, and the client is informed of this fact. Other disputes, for example those described under R380.13, may not necessarily lead to the consequences under R380.19 to R380.21.
39. In the circumstances where a dispute with management in terms of R380.13 occurs, there should be a mechanism to deal with 'other disagreements' that allow the PA to withdraw from the engagement and professional relationship if serious damage to the reputation of the PA or the profession is to be expected.
40. In respect of R380.19 and R380.20, there may be an opportunity to obtain an advance ruling from the appropriate tax authorities as to whether the tax arrangement conforms with their interpretation of the law. Indeed, this may be an expectation or even a requirement where the client is in a national co-operative compliance programme.
41. It could be the case that voluntary advance disclosure of the arrangement to the tax authorities could prevent the disagreement with the client escalating to a level that a PA needs to consider disassociating themselves from the engagement. Consequently, we recommend that the suggestion that the PA could advise to client to fully disclose the arrangement to the relevant tax authorities should be moved from R380.20 to R380.19.

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### Request for Specific Comments 10 - Documentation

*Do you agree with the IESBA's proposals regarding documentation as outlined in Section VII.J above?*

42. We note that the Explanatory Memorandum states that "IESBA believes that the reasons for documentation set out in paragraphs 380.23 A2 and 280.21 A2 are sufficiently persuasive that in the vast majority of cases, PAs will document the various matters set out in paragraphs 380.23 A1 and 280.21 A1" but stops short of making it compulsory:



- a. to maintain consistency with the non-audit sections of the Code, and
  - b. because documentation is more of a quality control issue than an ethical one.
43. However, we believe that the issues facing professional accountants involved in tax planning services may call for a different approach in respect of documentation. For example, in the grey zone there is uncertainty over whether an arrangement is legal or not legal. This can be a risk for PAs trying best advise their client as to the tax consequences of a business transaction the client is considering. There may also be an opportunity to reduce the client's tax liabilities below that intended by legislators by leveraging uncertainty, mismatches etc. – what is commonly described as aggressive tax planning. There is a strong argument that the decision whether or not to 'aggressively' utilise the grey zone is an ethical decision and not risk management.
44. Proper documentation is a useful tool to facilitate ethical considerations – especially as part of the process when considering whether the advice has a credible basis and then performing the stand-back test. In some jurisdictions, if a tax planning arrangement is defeated in court it can attract criminal penalties so adequate documentation of the thought processes that lead to the advice would be a vital tool to protect the PA. As is stated in Article 3.11 of the UK's *Professional Conduct in Relation to Taxation*, "notes taken on a timely basis are likely to be the most convincing way of demonstrating compliance with the principles after the event, to the benefit of the member and the client and to satisfy any wider public concerns".

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#### **Request for Specific Comments 11 - Tax Planning Products or Arrangements Developed by a Third Party**

*Do you agree with the IESBA's proposals as detailed in Section VII.K above addressing TP products or arrangements developed by a third party provider?*

45. Article 380.22 is extremely brief and requires reference to paragraphs 88 and 89 of the Explanatory Memorandum to provide context. In particular, the following points should be included in Article 380.22:
- a. The need to inform the client of the PA's relationship with the external provider. This is especially pertinent where the external provider is somehow related to the PA – i.e., by common ownership or by heavily interlinked business models.
  - b. The need to for the PA to ascertain the provider's competence – for example, if they are members of an appropriate professional body with a code of conduct, professional indemnity insurance etc.
  - c. The statement that the responsibilities of the PA are no different when referrals are made to a third-party provider than if the PA was the creator of the tax planning arrangement.
46. Where such referral fees are permitted by local law, we believe that the PA should disclose to the client the fact that they will receive a commission for referral, and an indication of the likely amount, at the earliest opportunity.
47. 380.22 refers to 'tax planning products or arrangements.' In certain jurisdictions, the term 'tax planning products' would be equated to actively marketed pre-packaged tax avoidance schemes that are not client specific. We do not believe that PAs should be associated with

such schemes and would recommend that 380.22 be amended to only refer to ‘tax planning arrangements.’

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### **Request for Specific Comments 12 - Multi-jurisdictional Tax Benefit**

*Do you agree with the IESBA’s proposals regarding a multi-jurisdiction tax benefit as described in Section VII.L above?*

48. We are not convinced that this topic requires a separate section in the Code. It is arguable that developments in international taxation such as the OECD’s anti-BEPS and GloBE initiatives have reduced the instances where certain taxpayers can benefit from mismatches in international taxation, and have introduced specific reporting requirements. In any event, the relevant factors presented in 380.14 A2 could be added to 380.17 A2. The suggestion that the client should report the tax advantages to the different jurisdictions could be included in 380.17 A4, except where there is existing mutual sharing of tax data, such as under the requirements of DAC 6.
49. Also, we do not support the inclusion of the second bulleted point in 380.14 A2. In our opinion, just because other taxpayers are taking advantage of the tax benefits does not make the multi-jurisdictional tax planning unethical behaviour. This goes against the principle of PAs having to use professional judgment while engaged in their work. Also, given the confidentiality of individual tax planning arrangements, it would be very unlikely that this could be proven and documented, so this is technically not possible as an option.

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### **Request for Specific Comments 13 - Proposed Consequential and Conforming Amendments**

*Do you agree with the proposed consequential and conforming amendments to Section 321 as described in Section VII.M above?*

50. We have some doubts as to whether including second opinions under the aegis of Section 321 of the Code is the best solution.
51. For a PA to provide a credible second opinion for a tax planning arrangement the requirements of R380.9 would apply. The second PA providing the second opinion would also normally need to consider the reasons why a second opinion is being sought. In such circumstances, it would be normal - arguably essential - for the PA providing a second opinion to be in contact with the accountant or other service provider responsible for the original advice. Indeed, many PAs would make specific reference for the need of this in their engagement letter.
52. Consequently, it could be preferable to require that second opinions on tax arrangements follow the full requirements detailed in this proposed amendment to the Code and to include second opinions in the description of tax planning and related services in 380.5 A2.